



AP / 3627 SFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Attorney Docket No. AUS920010325US1

IN RE APPLICATION OF:

Gutierrez, et al

Serial No. 09/852,831

Filed: May 10, 2001

For: RESERVE PRICE AUCTIONING

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Examiner: James A. Kramer

Art Unit: 3627

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in triplicate in support of the Appeal in
the above-identified application.

CERTIFICATE OF MAILING
37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date below:

July 22, 2004
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Robert D. Walker
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 I. With regard to the rejection of claims 1-26 under 35 USC
 103(a) over Alaia et al, it is respectfully submitted that there
 is no basis, disclosure, teaching or even suggestion in Alaia
 sufficient to render the present invention (as presented in
 currently pending claims 1-26) obvious. 6

CONCLUSION 9

APPENDIX (Pending Claims) 11-16

74 REAL PARTY IN INTEREST

75
76 The present application is assigned to International Business
77 Machines Corporation, the real party in interest.
78

79
80 RELATED APPEALS AND INTERFERENCES

81
82 No related appeal is presently pending.
83
84

85 STATUS OF THE CLAIMS

86
87 Claims 1-26 are pending and stand finally rejected by the
88 Examiner as noted in the Final Office Action mailed March 5,
89 2004.
90
91

92 STATUS OF AMENDMENTS

93
94 Prior to the Final Office Action (mailed 3/5/04), there was only
95 one Office Action mailed 9/24/03 and one Amendment mailed
96 12/22/03. The Second and Final Office Action rejected all 26
97 claims under 35 USC 103 over a single reference. The last entered
98 amendment was submitted 12/22/03 which amended the claims to the
99 text shown in the Appendix.
100
101

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102 SUMMARY OF THE INVENTION

103
104 The present application discloses a method and implementing
105 system in which items are offered for auction sale at a network
106 site to bidders who access the auction site (e.g., *inter alia*,
107 page 4, lines 1-5). A seller is enabled to designate a reserve
108 price (e.g., *inter alia*, page 5, line 30 et seq.) as well as a
109 number of automatic auction extensions (e.g., *inter alia*, page 6,
110 line 4 et seq.) to an initial auction period. If the designated
111 reserve price for an item is not met during the initial auction
112 period (e.g., *inter alia*, Fig. 4, #411), and the seller has
113 authorized a designated number of auction extensions (e.g., *inter*
114 *alia*, Fig. 4, #417, 419), the auction is automatically continued
115 beyond the initial auction period and is automatically extended
116 for the designated number of extensions (e.g., *inter alia*, page
117 7, line 7 et seq.) until either a bid for the reserve price is
118 received or the number of authorized extensions has transpired
119 (e.g., *inter alia*, Fig. 4, #419, 415).

120
121 The above methodology is set forth in pending claim 1, which
122 recites:

123
124 "1. A method for conducting an auction at an auction server for an item offered for sale, said
125 method comprising:

126
127 enabling a seller to designate a predetermined reserve price for said item;

128
129 enabling bidders to be connected to said auction server through an interconnection network;

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130
131 receiving price bids from said bidders for said item during an auction period;

132
133 determining that none of said price bids is equal to or greater than said predetermined reserve
134 price during said auction period;

135
136 determining that an extension of said auction period was authorized by a seller of said item if none
137 of said price bids was equal to or greater than said predetermined reserve price; and

138
139 automatically extending said auction period if said extension of said auction period was
140 authorized."

141
142
143 **ISSUES**

144
145 1. Is the Examiner's rejection of claims 1-26 under 35 USC 103(a)
146 as being unpatentable over Alaia et al, U. S. Patent 6,230,147 B1
147 (hereinafter referred to as "Alaia"), well founded?

148
149
150 **GROUPING OF THE CLAIMS**

151
152 For purposes of this Appeal, claims 1-13 stand or fall as a
153 group, and claims 14-25 stand or fall as a group and independent
154 claim 26 stands or falls alone. Method claim 1 and claims 2-13,
155 which ultimately depend from claim 1, comprise a group of various
156 combinations of the claimed methodology, independent medium claim
157 14 and claims 15-25, which ultimately depend from claim 14,
158 comprise a medium embodiment of the present invention and

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independent system claim 26 defines a system embodying the disclosed methodology.

ARGUMENT

I. With regard to the rejection of claims 1-26 under 35 USC 103(a) over Alaia et al, it is respectfully submitted that there is no basis, disclosure, teaching or even suggestion in Alaia sufficient to render the present invention (as presented in currently pending claims 1-26) obvious. It is further submitted that Alaia not only does not teach or suggest the total combination of elements and relationships as presently set forth in the appended claims, but in fact Alaia actually teaches away from the present invention as currently defined by the claims presented in the Appendix.

The Alaia reference describes a "buyer" offered auction not a "seller" offered auction. The dynamics of each type of auction are totally different with different operational characteristics, goals and results. The claims of the present application are all directed to a seller auction as specifically stated in the claims.

Alaia specifically states in the Abstract that "the bidding status of a lot can be set to a 'pending' status after the nominal closing time for submission of bids to allow bidders to alert the auction coordinator of technical problems in submission of bids". It is significant to note that **there is necessarily a**

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break in the Alaia buyer-auction process. In the present invention, if a predetermined reserve price is not met then an extension is implemented automatically. A break in the auction bidding, as suggested by Alaia, would not solve the problem addressed by the applicant of enabling an uninterrupted continued bidding for an item (not an offer to sell a lot as required in the Alaia buyer's auction) in order to obtain a bid equal to or greater than a predetermined reserve price bid (not in order to synchronize separate and different auction times among several auctions as is taught by Alaia). With the present invention, bids are evaluated compared to the predetermined reserve price number whereas in Alaia, bids are evaluated against a current best bid - there is no mention or even suggestion of anything that might even arguably correspond to a predetermined reserve price as that term is disclosed and claimed in the present application. This distinction is critical because it shows that the two auction systems are quite different and the operational aspects of one system (a buyer system) cannot be substituted for those of another system (a seller system) without a total breakdown of the flow of the seller auction system. That being the case, it is submitted that pieces and parts of a buyer auction system cannot be substituted for, or suggestive of, other pieces and parts of a seller-oriented auction since such a substitution would render the seller auction system inoperable for its intended purpose. A direct substitution of the Alaia bidding extension process would, by definition, depend only on the "current" or "then low" bidding compared to other received bids and would have absolutely no use for a predetermined reserve price designation for initiating an extended bid period, and thus cannot be used to render the claimed extension processing (which includes a "predetermined

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reserve price" designator) obvious. There is no teaching or suggestion in Alaia that even contemplates the currently claimed combination of elements and relationships including:

"enabling a seller to designate a predetermined reserve price for said item; . . .

determining that none of said price bids is equal to or greater than said predetermined reserve price during said auction period;

determining that an extension of said auction period was authorized by a seller of said item if none of said price bids was equal to or greater than said predetermined reserve price; and

automatically extending said auction period if said extension of said auction period was authorized."

It is also significant to note that a substitution of the Alaia methodology in the applicant's system would render applicant's system inoperable for its stated intended purpose since there **would necessarily be a break in the bidding process, a result intentionally avoided by the applicant's methodology.** Further, a substitution of the applicant's methodology in the Alaia system would render the Alaia system inoperable for its stated intended purpose since a break to a "pending" status between conflicting auction closing times could not be achieved. In view of this direct conflict, it is submitted that there can not possibly be a suggestion in Alaia that could render the present invention obvious. **Since a substitution of the Alaia methodology into the applicant's system would render the applicant's system inoperable**

for its intended purpose, it is a necessary corollary that Alaia cannot be said to render the present invention obvious.

It is therefore submitted that claims 1-26 are allowable under 35 USC 103(a) over Alaia et al.

CONCLUSION

For the reasons stated above, applicant urges the Board to consider that Alaia et al does not even suggest a method or system for conducting an auction at an auction server for an item offered for sale, in which the method comprises enabling a seller to designate a predetermined reserve price for an item, enabling bidders to be connected to said auction server through an interconnection network, receiving price bids from said bidders for said item during an auction period, determining that none of the price bids is equal to or greater than the predetermined reserve price during the auction period, determining that an extension of the auction period was authorized by a seller of the item if none of the price bids was equal to or greater than the predetermined reserve price, and automatically extending the auction period if the extension of the auction period was authorized, as those functions and relationships are set forth in the pending claims 1-26.

Consequently, applicant urges that the rejection of claims 1-26 under 35 USC 103(a) as being unpatentable over Alaia et al, is not well-founded and should be reversed.

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277 Please charge IBM Corporation Deposit Account No. 09-0447 in the
278 amount of \$330.00 for submission of a Brief in Support of Appeal.
279 No additional fee or extension of time is believed to be
280 required; however, in the event an additional fee or extension of
281 time is required, please charge the fee, as well as any other fee
282 necessary to further the prosecution of this application, to the
283 above-identified deposit account.
284 Respectfully submitted,

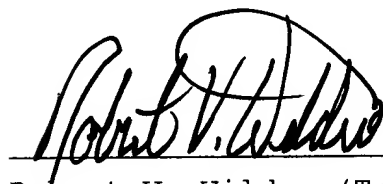
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A handwritten signature in black ink, appearing to read "Robert V. Wilder", is written over a horizontal line.

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APPENDIX

1. A method for conducting an auction at an auction server for an item offered for sale, said method comprising:

enabling a seller to designate a predetermined reserve price for said item;

enabling bidders to be connected to said auction server through an interconnection network;

receiving price bids from said bidders for said item during an auction period;

determining that none of said price bids is equal to or greater than said predetermined reserve price during said auction period;

determining that an extension of said auction period was authorized by a seller of said item if none of said price bids was equal to or greater than said predetermined reserve price;

and

automatically extending said auction period if said extension of said auction period was authorized.

2. The method as set forth in claim 1 and further including enabling said seller to input said predetermined reserve price through an input screen at a seller terminal.

326
327 3. The method as set forth in claim 2 wherein said
328 interconnection network is an Internet interconnection network.
329
330 4. The method as set forth in claim 1 and further including:
331
332 enabling said seller to input said predetermined reserve price
333 prior to said auction.
334
335 5. The method as set forth in claim 4 wherein said predetermined
336 reserve price is input by said seller using a computer device.
337
338 6. The method as set forth in claim 4 wherein said predetermined
339 reserve price is input by said seller using a wireless device.
340
341 7. The method as set forth in claim 4 wherein at least one of
342 said price bids is input by a bidder using a computer device.
343
344 8. The method as set forth in claim 4 wherein at least one of
345 said price bids is input by a bidder using a portable device.
346
347 9. The method as set forth in claim 4 wherein at least one of
348 said price bids is input by a bidder using a wireless device.
349
350 10. The method as set forth in claim 4 wherein at least one of
351 said price bids is input by a bidder using a wireless phone
352 device.
353

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354 11. The method as set forth in claim 1 and further including:
355
356 enabling said seller to designate a duration for said extension.
357
358 12. The method as set forth in claim 11 and further including:
359
360 enabling said seller to designate a number of extensions to be
361 automatically executed so long as none of said price bids equaled
362 or exceeded said predetermined reserve price.
363
364 13. The method as set forth in claim 1 and further including
365 notifying said bidders of said extension.
366
367 14. A storage medium including machine readable coded indicia,
368 said storage medium being selectively coupled to a reading
369 device, said reading device being selectively coupled to
370 processing circuitry within a computer system, said reading
371 device being selectively operable to read said machine readable
372 coded indicia and provide program signals representative thereof,
373 said program signals being effective to enable an auction of an
374 item offered for sale, said program signals being selectively
375 operable for:
376
377 enabling a seller of said item to input a predetermined reserve
378 price for said item;
379
380 receiving price bids from bidders for said item during an auction
381 period;

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382
383 determining that none of said price bids is equal to or greater
384 than said predetermined reserve price;
385
386 determining that an extension of said auction period was
387 authorized by said seller of said item if none of said price bids
388 was equal to or greater than said predetermined reserve price;
389 and
390
391 automatically extending said auction period if said extension of
392 said auction period was authorized.
393
394 15. The medium as set forth in claim 14 and further including
395 enabling said seller to input said predetermined reserve price
396 from a user terminal separate from said auction server.
397
398 16. The medium as set forth in claim 15 wherein said
399 interconnection network is an Internet interconnection network.
400
401 17. The medium as set forth in claim 14 wherein said program
402 signals are further effective for:
403
404 enabling said seller to input said predetermined reserve price
405 prior to said auction.
406
407 18. The medium as set forth in claim 17 wherein said
408 predetermined reserve price is input by said seller using a
409 computer device.

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410 19. The medium as set forth in claim 17 wherein said
411 predetermined reserve price is input by said seller using a
412 wireless device.
413
414 20. The medium as set forth in claim 17 wherein at least one of
415 said price bids is input by a bidder using a computer device.
416
417 21. The medium as set forth in claim 17 wherein at least one of
418 said price bids is input by a bidder using a portable device.
419
420 22. The medium as set forth in claim 17 wherein at least one of
421 said price bids is input by a bidder using a wireless device.
422
423 23. The medium as set forth in claim 17 wherein at least one of
424 said price bids is input by a bidder using a wireless phone
425 device.
426
427 24. The medium as set forth in claim 14 wherein said program
428 signals are further effective for:
429
430 enabling said seller to designate a duration for said extension.
431
432 25. The medium as set forth in claim 24 wherein said program
433 signals are further effective for:
434
435 enabling said seller to designate a number of extensions to be
436 automatically executed so long as none of said price bids equaled
437 or exceeded said predetermined reserve price.

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438
439 26. A computer system comprising:
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441 a system bus;
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443 a CPU device connected to said system bus;
444
445 a memory device connected to said system bus; and
446
447 connection means arranged to connect said computer system to a
448 network, said computer system being arranged to conduct an
449 auction of an item offered for sale over said network, said
450 computer system further including input means by which said
451 seller is enabled to input a predetermined reserve price for said
452 item, and a predetermined number of extension periods for said
453 auction, said computer system being selectively operable for
454 receiving price bids from bidders for said item during an auction
455 period and upon determining that none of said price bids is equal
456 to or greater than said predetermined reserve price, to
457 automatically extend said auction period for up to said
458 predetermined number of extension periods so long as none of said
459 price bids is equal to or greater than said predetermined reserve
460 price.

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